IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/07/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.6738 OF 1997

The Managing Director,
Tamil Nadu Agro Industries
Corporation Ltd.,
Industrial Estate,
Guindy, Chennai 600 032. .. Petitioner

-Vs-

1. The Presiding Officer,
I Addl. Labour Court,
Chennai

2. Arumugam (Deceased)
3. A. Kalarani, W/o. Arumugam
4. A. Geetha, D/o. Arumugam
5. Minor A. Krishnakumar,
S/o. Arumugam
6. Minor A. Gomathy,
D/o. Arumugam
Respondents 5 & 6 are minors
rep. by their mother A. Kalarani
(Respondents 3 to 6 substituted
as Lrs of the deceased 2nd
Respondent as per order dated
15.3.2002) .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

!For Petitioner : Mr.C. Venkatesalu

^For Respondent-1 : Mrs.N.G. Kalaiselvi
Special Govt. Pleader

Respondents 3-6 : Mr.A.S. Thambusamy

:J U D G M E N T

The original respondent No.2, since deceased, was working

under the petitioner Corporation initially as a casual labourer and on regular basis as Artisan Grade IV on 1.11.1978. Subsequently the workman was placed under suspension on the allegation that he had committed theft by taking away raw materials from the factory i.e., 2 bundles of polythylene twine. A charge memo was issued levelling four charges. The substratum of the charges was to the effect that he had committed theft on 16.11.1986. Domestic enquiry was conducted and on the basis of the findings recorded, the workman was dismissed from service by order dated 22.2.1988. Thereafter the appeal filed by the workman was rejected on 9.5.1989. After a lapse of about two years, the workman raised Industrial Dispute which was numbered as I.D.No.324 of 1991 . The Labour Court on the basis of the materials adduced before it came to the conclusion that allegation of theft had not been proved and other charges being depending upon the allegation relating to theft, there is no justification for passing the order of dismissal. Accordingly there was a

direction to reinstate the workman with full backwages and continuity of service by award dated 26.3.1996. Thereafter the present writ petition has been filed.

2. While considering the question of stay and vacate stay applications, an order was passed by the learned single Judge of this Court staying the reinstatement subject to the condition that a sum of Rs.820 /- per month should be paid with effect from 1.7.1997 and a sum of Rs.50,000/- should be paid to the second respondent. It was further directed that a further sum of Rs.1 lakh should be deposited in the Bank and the workman was permitted to withdraw the interest.

3. The second respondent expired on 15.7.2001 and thereafter on the basis of the petition, substitution has been allowed by order dated 15.3.2002 and by subsequent order the widow of the workman has been permitted to withdraw the interest on the deposited amount. It was also directed at that stage that pendency of the writ petition would not stand in the way of paying provident fund and gratuity to the legal heirs of the workman.

4. Learned counsel appearing for the petitioner has submitted that keeping in view the seriousness of the allegations which had been proved in a properly conducted domestic enquiry, the Labour Court should not have passed an order of reinstatement with full backwages. It has been submitted that the signed statement of the workman admitting the guilt had not been considered.

5. Learned counsel appearing for the legal representatives of the workman on the other hand has submitted that the findings had been rendered on the basis of the materials on record and do not warrant interference.

6. A perusal of the award of the Labour Court indicates that even though the Labour Court had referred to the statement of the workman admitting the incident, no specific reason has been given for discarding the same, but only a vague reference has been made to the statement of the workman to the effect that :

Planning Officer, Satheesh Rao and Operator Mr. Purushothaman compelled and threatened me to give a statement like that. Purushothaman tried to assault me with his hands.

Thereafter the Court has observed :

. . . For arguments sake, even it is admitted that petitioner gave the statement, for the charges levelled against the petitioner, the admission statement cannot be accepted.

It is thus apparent that the Labour Court has not given a specific finding or reasoning regarding the acceptability or non-acceptability of the statement made by the workman. In the claim statement, no specific ground has been taken that the statement has been forcibly obtained.

7. Be that as it may. In the absence of any specific reason given by the Labour Court, either regarding acceptance or rejection of such statement, in normal course, the matter would have been remanded to the Labour Court to consider the matter afresh. However, as already indicated, in the meantime the workman having been expired the legal representatives have been brought on record. Since the workman has expired, the question of reinstatement would not arise and the only question would be regarding payment of backwages.

8. The statement given to the Planning Officer is to the following effect:-

To
The Planning Officer,

I have taken two bundles of twins without knowledge. I have handed over it to Mr. (POF). Hereafter I will not do the mistake. I humbly request.

9. A perusal of the aforesaid statement makes it appear as if two bundles had been handed over. In other words, even though the workman was trying to take away the bundles, ultimately the materials had not been taken away. Remanding the matter at this stage would involve further litigational expenditure for the Management as well as for the legal representatives of the workman. Even if the statement is accepted in full, it is doubtful whether extreme punishment of dismissal from service would be justified and possibly a lesser punishment would have been more appropriate. As already indicated, at the time of grant of stay certain conditions have been imposed.

10. Having regard to all these aspects and the subsequent events, I think interest of justice would be served by giving the following directions :
(1) The deposited amount of Rs.1,00,000/- should be paid to the legal representatives of the workman.

(2) The payment of Provident Fund and Gratuity to the legal representatives, if not already made, may be paid within a period of three months from the date of disposal of this writ petition.

(3) Apart from the above, the legal representatives would not be entitled to any other amount.

11. With the above directions, the writ petition is disposed of. NO costs.

Index : Yes
Internet : Yes
dpk

To

The Presiding Officer,
I Addl. Labour Court,
Chennai